



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,105	11/19/2003	Grayson Morris	ACS 64865 (4144P)	9892
24201	7590	06/13/2005	EXAMINER	
FULWIDER PATTON LEE & UTECHT, LLP HOWARD HUGHES CENTER 6060 CENTER DRIVE TENTH FLOOR LOS ANGELES, CA 90045			GHERBI, SUZETTE JAIME J	
			ART UNIT	PAPER NUMBER
			3738	
DATE MAILED: 06/13/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/718,105

Applicant(s)

MORRIS ET AL.

Examiner

Suzette J Gherbi

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>8/16/04</u> . | 6) <input checked="" type="checkbox"/> Other: <u>See Continuation Sheet</u> . |

Continuation of Attachment(s) 6). Other: attached fig. 8 of 2004/0044400.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claims 1, 34, 39 and 40 recite the limitation "the number of peaks". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-2, 4-6, 11-12, 14-17, 24, 27-41 are rejected under 35 U.S.C. 102(e) as being anticipated by Cheng et al. 2004/0044400. Cheng et al. discloses the invention

Art Unit: 3738

as claimed comprising: a cylindrical body having a plurality of rings (71, 73, 75) aligned along a common longitudinal axis (see figure 8); each ring having a compressed and expanded delivery state; the cylindrical body having a proximal section; a distal section and a central section (73); the proximal section having between one and fifteen rings; the distal section having between one and fifteen rings; the central section having between one and ten rings; a number of first peaks in the central section (34) differing in number of peaks in the proximal section and the distal section (count peaks in figure 8 and 10); and the plurality of peaks having a proximal end and a distal end so that the proximal end of at least one peak of the central section is connected to the distal end of at least one first peak of the proximal section by at least one link (i.e., 77, 79) it is inherent that (77, 79) are links as defined by the American Heritage Dictionary c) a single connecting element; wherein the stent is formed from NiTi [0018]; wherein drugs can be incorporated [0081]. The "openings" as claimed are formed when each ring's the out of phase peaks meet (see attached mark-up copy).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3, 7-10, 18-23, 25-26, are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheng et al. in view of Stiger 2003/0204244. Cheng et al. has been disclosed above however Cheng's link (77, 79, 89, 99) in figures 8-10 with out of phase attachments are not linear, curved or those combinations. However Cheng et al. does disclose in other various embodiments links that are straight, curved or partially straight and curved (see 17, 15) and Stiger teaches straight links/bridges 206A that connect a first peak to a second peak. It would have been obvious to one having ordinary skill in the art at the time the invention was made to take the links (77, 79, 89 and 99) and change them to be straight or curved because Cheng states in section [0058] that the number and location of he links can be varied in order to vary the desired longitudinal and flexibility of the stent and is deemed a design modification. It is also obvious to modify the number of peaks in each section in order vary the axial stiffness of the device.

Allowable Subject Matter

8. Claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Claim 13 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hong et al. 6,565,599 ; Lau et al. 6,066,167 ; and Killion et al. 5,938,697 all show related material..
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suzette J. Jackson whose work schedule is Monday-Friday 9-6:30 off every other Friday and whose telephone number is 571-272-4751.
12. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306.
13. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.



Suzette J-J Gherbi
08 June 2005

FIG. 8

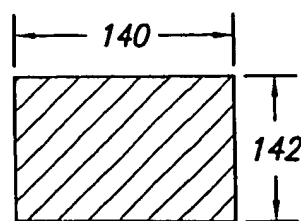
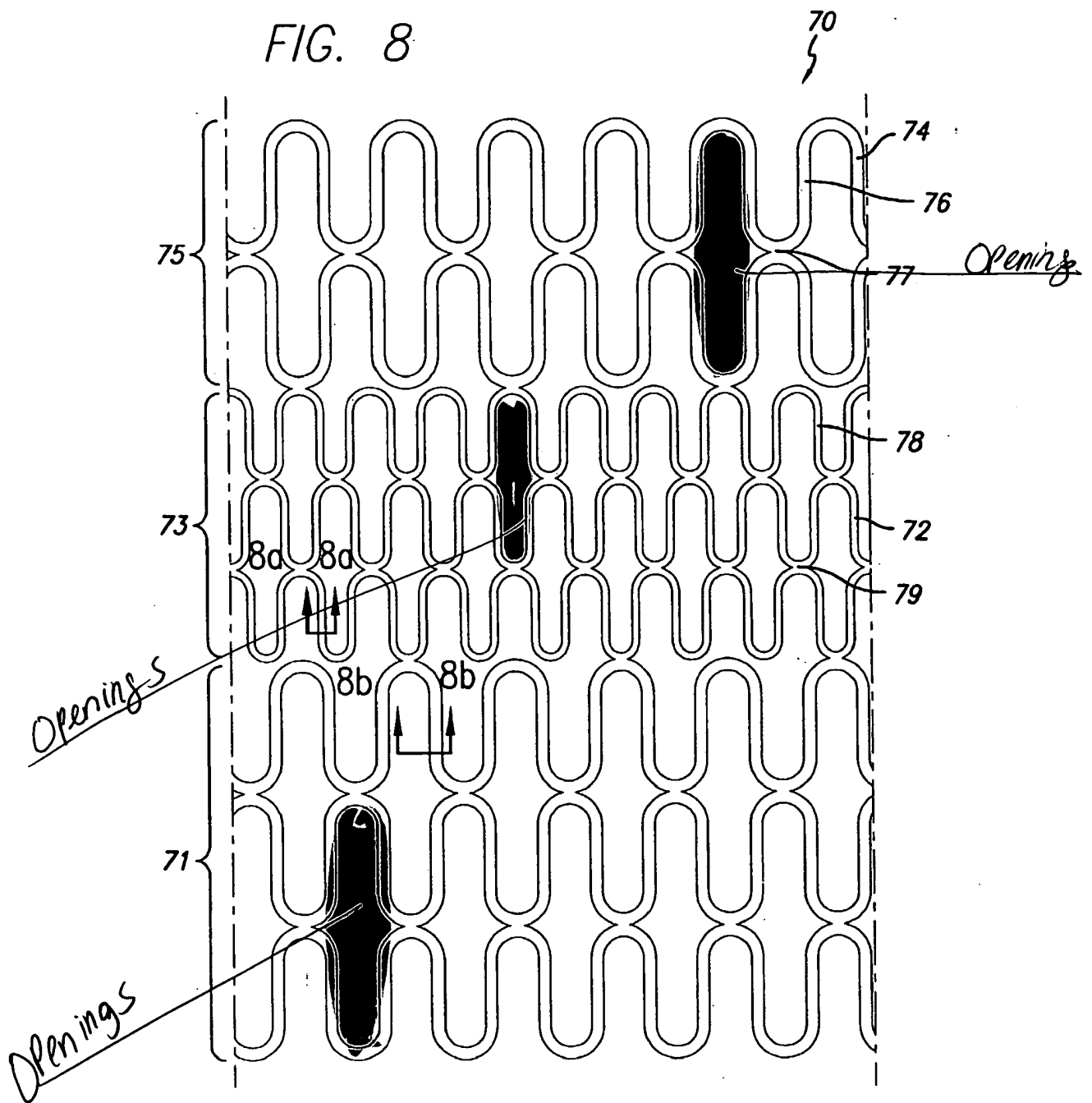


FIG. 8a

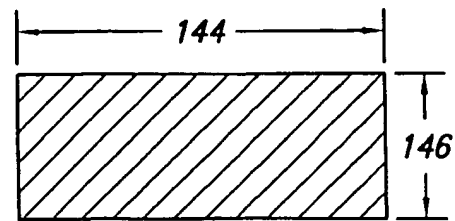


FIG. 8b